

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7407

BILL NUMBER: HB 1482

NOTE PREPARED: Feb 1, 2013

BILL AMENDED: Jan 31, 2013

SUBJECT: Expungement.

FIRST AUTHOR: Rep. McMillin

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill has the following provisions:

- A. *Change in Judgment of Conviction* – It allows a court to enter judgment of conviction as a Class D felony with the express provision that the conviction will be converted to a conviction as a Class A misdemeanor if the defendant fulfills certain conditions.
- B. *Expungement and Restrained Access to Criminal Records* – The bill requires a sentencing court to expunge the records of certain nonviolent Class D felony and misdemeanor convictions, and certain delinquency adjudications, if: (1) 10 years have passed since the person's conviction; (2) the person has not committed a new offense; and (3) no new charges are pending. It permits a court to expunge the records of certain nonviolent felony convictions, and certain delinquency adjudications, if: (1) the later of 10 years have passed since the person's conviction, or five years have passed since completion of the person's sentence; (2) the person has not committed a new offense; and (3) no new charges are pending. It requires a court to restrict disclosure of certain arrest records, if the arrest: (1) did not result in a conviction; or (2) resulted in a conviction that was vacated on appeal. It allows a prosecuting attorney to gain access to sealed records under certain circumstances. It provides that if a court orders a person's records to be expunged or restricted, the person: (1) shall be treated for all purposes as if the person had not been arrested for or convicted of the felony or misdemeanor recorded in the expunged or restricted records; and (2) may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the expunged records.
- C. *Converting from Class D Felony to Class A Misdemeanor* – It specifies that orders restricting or expunging records apply to the Bureau of Motor Vehicles.

- D. *Repeal of Certain Provisions*- It repeals superseded provisions concerning expungement and restricted disclosure of records.

Effective Date: July 1, 2013.

Explanation of State Expenditures: (Revised) *Effect on ISP Workload* – ISP expects an increase in requests for criminal histories to be expunged as the public's knowledge of this law becomes more widespread. To comply with the added petitions and court orders, ISP estimates needing three additional staff: one paralegal and two clerical persons at an estimated cost of \$131,084 in FY 2014 and \$128,084 in FY 2015. The added costs are described in the following table.

	Salary		Benefit s		Health Insurance		Numbe r		Annual Cost
Paralegal	\$33,748	x	22.23%	+	\$11,205	x	1	=	\$52,455
Clerical Staff	\$20,592	x	22.23%	+	\$11,205	x	2	=	\$72,749
Annual Salaries									\$125,204
Annual Computer Costs (\$960 x 3)									\$2,880
One time Office Furniture Expenses \$1,000 x 3									\$3,000
2014 Expense									\$131,084
2015 Expense									\$128,084

Explanation of State Revenues: *Court Fee Revenue:* An individual must request an expungement of records in court. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

In addition, some or all of the judicial salaries fee (\$20), public defense administration fee (\$5), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Revenue from the pro bono services fee (\$1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee (\$5) are deposited into the state User Fee Fund.

Explanation of Local Expenditures: *Summary-* This bill could increase the number of hearings that a criminal court would have to conduct.

The following tables compare current law with changes proposed in this bill for persons who were convicted of certain misdemeanors and felonies.

Persons Convicted of Misdemeanor or Felony		
	<u>Current Law</u>	<u>Proposed</u>
Misdemeanors or felonies	Persons convicted of a misdemeanor or a Class D felony that did not result in injury to a person	Misdemeanor or any felony that is not a crime under the sex or violent offender statute; perjury; or official misconduct
Time frame for misdemeanants and Class D felons	8 years after the date a person completes the person's sentence and satisfies any other obligations imposed on the person as a part of the sentence	10 years after the date a person was convicted of the felony or misdemeanor
Time frame for all other felons	Class A, B, or C felons are not eligible under current law to apply for restricted access of criminal records	The longer of 10 years after the date a person was convicted or 5 years after the person completed the sentence for the felony
Action the court can take	Restrict access to the records concerning the person's arrest and involvement in criminal or juvenile court proceedings from DOC, state and local law enforcement agencies	All court records concerning the person shall be permanently sealed and all other records may be given to the person or destroyed
Employer restriction	Class B infraction for employer to ask an employee, contract employee, or applicant whether the person's criminal records have been sealed or restricted	Repealed

Arrest Records		
	<u>Current Law</u>	<u>Proposed</u>
Misdemeanors or felonies	If the crime is not prosecuted; if charges are dismissed; if the person is acquitted; or if conviction is subsequently vacated	Any arrest that did not result in a conviction or juvenile adjudication or vacated on appeal
Time frame	Person may not file earlier than 30 days after acquittal or dismissal or 365 days after vacating order	Any time after the arrest
Notification of parties	The prosecuting attorney may oppose a petition to restrict records and a court hearing may occur	None
Action the court can take	Order State Police not to disclose or permit disclosure of the petitioner's limited criminal history information to a noncriminal justice organization or an individual	Order disclosure of the arrest records restricted so that only a criminal justice agency may access the records

(Revised) *Change in Judgment of Conviction* -- The bill potentially increases the number of conversions of Class D felonies to Class A misdemeanors. Courts report that they interpret this portion of the statute to mean that the court can convert a Class D felony to a Class A misdemeanor if a plea agreement is accepted by the

court within three years of the date of the sentence. Consequently, if the convicted person completes and satisfies all conditions in the sentence and petitions the court after three years and a day, the court would not be legally permitted to convert the felony. As proposed, this bill would permit the court to make this conversion even after three years have elapsed.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds.

The document storage fee (\$2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located:

- Document fees (\$1 per document) are charged for preparing transcripts or copies of record or certificate under seal.
- Service fee (\$10) collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Department of Correction; Indiana State Police; Bureau of Motor Vehicles.

Local Agencies Affected: Prosecuting attorneys; county sheriffs; trial courts with criminal jurisdiction.

Information Sources:

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